

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADTRADER, INC., ET AL.,  
Plaintiffs,  
v.  
GOOGLE LLC,  
Defendant.

Case No. [17-cv-07082-BLF](#) (VKD)

**ORDER RE SEPTEMBER 18, 2018  
JOINT DISCOVERY DISPUTE  
LETTER**

Re: Dkt. Nos. 75-3, 75-4

Plaintiff AdTrader, Inc. (“AdTrader”) challenges defendant Google LLC’s (“Google”) confidentiality designation for a portion of Google’s response to AdTrader’s Interrogatory No. 5. Dkt. No. 75-4. Google moves to maintain the confidentiality designation. The Court finds this matter suitable for decision without a hearing.

Having considered the submissions of the parties, the Court grants Google’s request to maintain the confidentiality designation for its response to Interrogatory No. 5 and denies AdTrader’s request to de-designate the response.

**I. BACKGROUND**

Using Google’s Ad Exchange (“AdX”) service, website publishers sell advertising space on their webpages in exchange for a share of the revenue advertisers pay to Google, and advertisers buy space to display their advertising online. Dkt. No. 72 ¶ 1. Intermediary companies may facilitate publishers’ and advertisers’ use of the AdX service. Network Partner Managers (“NPMs”) assist publishers, and advertising agencies assist advertisers. *Id.* ¶¶ 25-26.

AdTrader was both a publisher and an NPM on behalf of other publishers, as well as an advertising agency on behalf of advertisers. *Id.* ¶¶ 47-49. Google terminated AdTrader’s

1 publisher-side NPM account after notifying AdTrader that all of the advertising impressions on  
2 AdTrader's websites were invalid. *Id.* ¶ 63. As a result, Google allegedly advised that it was  
3 withholding all revenue associated with those impressions and would refund that revenue to the  
4 affected advertisers. In its role as advertising agency on behalf of those affected advertisers,  
5 AdTrader says it should have received the refunded revenue, but that Google did not refund the  
6 revenue. *Id.* ¶¶ 76-84.

7 AdTrader asserts individual claims for breach of contract, breach of the implied covenant  
8 of good faith and fair dealing, intentional interference with contract, and declaratory relief.  
9 AdTrader also asserts claims on behalf of a putative class of AdX advertisers.

10 AdTrader's Interrogatory No. 5 to Google asks:

11 If YOU contend that any of the websites registered to PLAINTIFF's  
12 AdX account engaged in invalid activity or violated YOUR policies,  
13 state the date of such invalid activity or non-compliance with YOUR  
14 policies, DESCRIBE the nature of each such invalid activity or  
15 policy violation, and IDENTIFY the specific website on which the  
16 invalid activity or policy violation took place.

17 Dkt. No. 75-5. In response, Google identified specific publisher websites managed by AdTrader  
18 that it contends were responsible for invalid activity and policy violations, and explained the  
19 nature of the invalid activity and violations. It designated this response "Confidential" under the  
20 protective order, which means that AdTrader may see the response but may not disclose it to non-  
21 parties, including the AdTrader client websites identified in the response. *See* Dkt. No. 66, sec.  
22 7.2.

23 According to Google, fraudulent advertising is "a large and complex problem that  
24 seriously affects online advertising by creating lucrative business opportunities for unethical  
25 actors." Dkt. No. 75-4 at 2. Google says that it has implemented systems and procedures to detect  
26 such fraud, and it argues that disclosure of its response to Interrogatory No. 5 would expose  
27 important information about those systems and procedures. *Id.* In particular, Google contends  
28 that if its interrogatory response is disclosed to certain AdTrader clients, the alleged fraudsters  
with learn details of which fraudulent activity was detected and which was not, which will then  
allow them to evade detection in the future. Google further observes that without a confidentiality

1 designation, the interrogatory responses are subject to public disclosure, which will assist other  
2 would-be fraudsters in successfully perpetuating advertising fraud. *Id.* at 3.

3 AdTrader argues that Google’s response to Interrogatory No. 5 does not contain the kind of  
4 commercially sensitive information that qualifies for a “Confidential” designation under the  
5 protective order. AdTrader observes that there has been extensive public reporting about  
6 advertisers who have engaged in fraud, and therefore, there is no meaningful risk that Google’s  
7 fraud detection systems will be compromised by the disclosure of the information in Interrogatory  
8 No. 5. However, AdTrader’s primary concern appears to be that the “Confidential” designation  
9 prevents it from testing Google’s claim that it terminated AdTrader’s AdX account due to the  
10 fraudulent activity of particular AdTrader clients. *Id.* at 5. AdTrader argues that it is effectively  
11 precluded from developing evidence from these clients to challenge Google’s grounds for  
12 termination.

## 13 **II. DISCUSSION**

14 Generally, the public may access litigation documents and information produced during  
15 discovery unless the party opposing disclosure shows good cause for a protective order. *In re*  
16 *Roman Catholic Archbishop of Portland in Oregon v. Various Tort Claimants*, 661 F.3d 417, 424  
17 (9th Cir. 2011); *Muench Photography, Inc. v. Pearson Education, Inc.*, Case No. 12-cv-01927  
18 WHO, 2013 WL 4475900 at \*3 (N.D. Cal. Aug. 15, 2013). The parties have stipulated to, and the  
19 Court has entered, a protective order in this case which permits the parties to designate certain  
20 materials as “Confidential,” preventing their public disclosure. *See* Dkt. No. 66, sec. 2.2. A party  
21 may challenge any such designation made by another party, as AdTrader does here. *Id.*, sec. 6.

22 In addressing the parties’ dispute, the Court first considers whether Google has shown it  
23 will suffer particularized harm or prejudice from disclosure of the information in its interrogatory  
24 response to AdTrader’s clients and to the public. *See In re Roman Catholic Archbishop*, 661 F.3d  
25 at 424. The Court concludes that Google has described with specificity the harm it expects to  
26 suffer if its response to Interrogatory No. 5 is disclosed to the specific AdTrader clients referenced  
27 in the response or to the general public. *See* Dkt. No. 75-4 at 2-3. The fact that there has been  
28 public reporting and discussion of advertising fraud by specific companies does not answer

1 Google's concern, which is that the interrogatory response reveals information about Google's  
2 own fraud detection activities, including what Google knows and what it does not know about  
3 particular non-parties' potentially fraudulent activities, which in turn reveals to potential  
4 perpetrators of advertising fraud the limitations of Google's fraud detection systems and  
5 procedures.

6 The Court next considers whether Google's private interest in protecting its interrogatory  
7 response from disclosure outweigh the public's interest in disclosure. *See In re Roman Catholic*  
8 *Archbishop*, 661 F.3d at 424 and n.5 (citing seven factors for consideration). Here, the public has  
9 no substantial interest in knowing particular information about Google's fraud detection  
10 procedures and systems (save those members of the public who might be interested in evading  
11 detection), and AdTrader has not articulated any such interest. AdTrader has identified no issue of  
12 public health and safety or of other importance to the public that is implicated by this particular  
13 interrogatory response. *See id.* (describing factors four and seven). The most critical factor, in the  
14 Court's view, is whether AdTrader's prosecution of this action will be impaired if it is not able to  
15 share Google's interrogatory response with particular clients. *See id.* (describing factors two and  
16 five).<sup>1</sup>

17 The Court disagrees that AdTrader's investigation efforts will be prejudiced if it is not able  
18 to share the confidential portion of Google's interrogatory response with AdTrader's clients.  
19 Google's designation of its interrogatory response gives AdTrader itself access to the information  
20 Google has provided. As Google acknowledges, AdTrader may conduct whatever investigation of  
21 those matters that it requires, so long as it does not reveal the content of Google's interrogatory  
22 response to a non-party. For example, AdTrader may ask specific clients about particular  
23 advertising activity and practices, but may not reveal Google's contentions about those activities  
24 and practices or that Google has identified those activities and practices to AdTrader in response  
25 to Interrogatory No. 5. Similarly, AdTrader may ask its clients about publicly reported fraudulent  
26 advertising activity.

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28 <sup>1</sup> None of the remaining factors bears on this dispute. No privacy interests are at stake. Disclosure  
of the information will not cause any party embarrassment. Google is not a public entity.

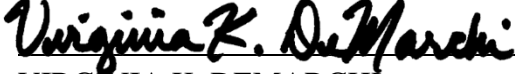
1 Having considered the private and public interests identified above, the Court finds that the  
2 applicable factors favor protecting the information Google has redacted from its response to  
3 Interrogatory No. 5. *See* Dkt. No. 75-5.

4 **III. CONCLUSION**

5 Google has shown good cause for maintaining the confidentiality of the designated portion  
6 of its response to AdTrader's Interrogatory No. 5. Accordingly, the Court grants Google's request  
7 to maintain the confidentiality designation for its response to Interrogatory No. 5 and denies  
8 AdTrader's request to de-designate the response.

9 **IT IS SO ORDERED.**

10 Dated: October 30, 2018

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13 VIRGINIA K. DEMARCHI  
14 United States Magistrate Judge  
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